P-13563

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
ALASKA OPERATIONS OFFICE
Room 537, Federal Building
222 West 7th Avenue, #19
Anchorage, Alaska 99513-7588

January 15, 2015

ORIGINAL

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, D.C. 20426

RE: EPA Scoping Comments on the Juneau Hydropower Inc. Sweetheart Lake Hydroelectric Project EIS, EPA Project #14-0061-DOE.

Dear Secretary Bose:

We have reviewed the Federal Energy Regulatory Commission (FERC) Notice of Intent (NOI) to Prepare Environmental Impact Statement (EIS) and Soliciting Comments, and Final Recommendations, Terms, and Conditions, and Prescriptions for the Juneau Hydropower, Inc. Sweetheart Lake Hydroelectric Project (FERC Project # 13563-003). We are submitting scoping comments in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 specifically directs the EPA to review and comment in writing on environmental impacts associated with all major federal actions.

Our review of the EIS will consider not only the expected environmental impacts of the project, but also the adequacy of the EIS in meeting the public disclosure requirements of NEPA. We have enclosed a copy of *EPA's Section 309 Review: The Clean Air Act and NEPA* which provides further elaboration of our EIS review responsibilities (Enclosure 2). We look forward to working closely with the FERC to fulfill our role under Section 309.

According to the NOI, the purpose of the EIS is to respond to the application and applicant-prepared environmental assessment filing by Juneau Hydropower Inc. for the Sweetheart Lake Hydropower project. The applicant has filed an original license application for a project consisting of a 280-ft.-long, 111-ft.-high roller compacted, concrete gravity dam at the mouth of Lower Sweetheart Lake; a 128,000 ft.-acre impoundment; a reservoir outlet tunnel; a concrete intake structure with fish screens; a power tunnel; penstocks; a powerhouse with 3-6.6 MW generators (19.8 MW total capacity); a 14,800 ft. transmission line and communication cable; a switchyard; a smolt re-entry pool; caretaker facility; dam shelter facility; and other appurtenant facilities.

We have developed the enclosed scoping comments for your consideration as you develop the EIS (Enclosure 1). We request that each issue we have identified will receive adequate treatment in the EIS. We are particularly concerned with potential impacts to water quality, aquatic habitat and wetlands; recreation; and the personal use sockeye fishery. We also support the evaluation of a full range of alternatives. We anticipate working cooperatively with the FERC to identify ways to avoid and minimize project impacts, as well as to disclose potential impacts to the public and decision makers.

The project as currently proposed by the applicant, and any other alternatives involving the discharge of dredged or fill materials into waters of the U.S., would require authorization from the U.S. Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act (CWA). It is our recommendation that the documentation and analysis in the EIS will be sufficient to support the Corps' permitting decision. For this reason, we recommend that practicability as defined in the 404(b)(1) Guidelines (40 CFR 230) be used as a screening criteria for all project components under all action alternatives that may require a Section 404 permit. The inclusion of a draft 404(b)(1) evaluation for the alternatives is also recommended. We also look forward to actively engaging with the FERC in any discussions regarding mitigation as required by NEPA and Section 404.

Thank you for the opportunity to provide comments on the NOI. Please contact me at (907) 271-6324 or curtis.jennifer@epa.gov if you have questions or would like additional information regarding our comments.

Sincerely,

Jennifer J. Curtis, NEPA Reviewer
Environmental Review and Sediments Management Unit

Enclosures:
1. EPA Region 10 Detailed Scoping Comments for the FERC Sweetheart Lake Hydroelectric Project EIS
2. EPA's Section 309 Review: The Clean Air Act and NEPA

ENCLOSURE 1

EPA REGION 10 DETAILED SCOPING COMMENTS FOR THE FERC SWEETHEART LAKE HYDROELECTRIC PROJECT EIS

Regulatory Role of EPA

EPA has authority under the Section 402 of the CWA National Pollution Discharge Elimination System (NPDES) program to regulate wastewater discharges into waters of the U.S., including stormwater discharges. Authority to implement this program in Alaska has been delegated to the State of Alaska. EPA retains oversight authority of the Alaska Pollutant Discharge Elimination System (APDES) program and may review any state-issued permit associated with this project.

Also, as identified in our cover letter, EPA promulgated regulations (40 CFR 230), which the Corps implements, authorizing the discharge of fill material into waters of the U.S. We will review and comment in writing on the Corps' Public Notice for this project.

Purpose and Need

The EIS should include a clear and concise statement of the underlying purpose and need for the proposed project, consistent with the implementing regulations for NEPA (40 CFR 1502.13). In presenting the purpose and need, the EIS should reflect not only the FERC's purpose, but also the broader public interest and need. A concise statement is of critical importance to setting up the analysis of alternatives, which could range from too tightly focused to too broad, depending on how the statement is written.

To support the statement of purpose and need, the EIS should discuss the proposed project in the context of the regional energy market and infrastructure, including identification of existing utilities and sources, and clearly describe how the need for the proposed project has been developed.

Range of Alternatives

Alternatives Criteria Development

The EIS should identify specific criteria that would be used to (1) develop a range of reasonable alternatives, (2) eliminate alternatives considered not reasonable, and (3) identify the agency preferred alternative. These criteria should be based on factors such as conservation of important aquatic and terrestrial habitats, maintaining wildlife connectivity and fish passage, economics, public need, practicability and public safety. The alternatives criteria should also incorporate substantive issues identified during the public scoping process, and tribal and agency consultations. The EIS should discuss the rationale and basis for how these criteria were developed.

As mentioned in the cover letter, we recommend that practicability as defined in the 404(b)(1) Guidelines be used as one of the criteria for identifying alternatives. It is important to keep in mind that for action alternatives requiring Section 404 authorization, the Corps may only authorize the alternative that is determined to be the least environmentally damaging practicable alternative (LEDPA). The environmental impacts of all practicable alternatives must be compared in order to demonstrate that one of them is the LEDPA.

Range of Reasonable Alternatives

The EIS should include a range of reasonable alternatives that meet the stated purpose and need for the project and that are responsive to the issues identified during the scoping process and through consultations. This will ensure that the EIS provides the public and the decision-maker with information that sharply defines the issues and identifies a clear basis for choice among alternatives as required by NEPA. The Council on Environmental Quality (CEQ) recommends that all reasonable alternatives be considered, even if some of them could be outside the capability or the jurisdiction of the agency preparing the EIS for the proposed action.

For this project, we recommend that FERC consider other dam designs as well as alternate energy projects to meet anticipated future need. The environmental impacts of the proposed project and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public. The potential impacts of each alternative should be quantified to the greatest extent possible. It would also be useful to list each alternative action's impacts and corresponding mitigation measures. The EPA encourages analysis of alternatives that will minimize environmental degradation.

Alternatives Analysis

The EPA recommends that tables, maps, figures, charts, photos, etc., be used as much as possible and wherever appropriate to present and display information and specific features of alternatives so that the various alternatives can be clearly understood. We believe that an alternatives matrix table that summarizes major features and significant environmental impacts of alternatives should be provided to facilitate understanding of the alternatives, particularly distinctions between alternatives, and to provide a comparative evaluation of alternatives in a manner that sharply defines issues for the decision-maker and the public (40 CFR 1502.14).

Additionally, more specific measures are often developed for individual alternatives to mitigate particular impacts. Such measures, as well as their anticipated effectiveness in accomplishing the planned purpose, should be disclosed and coordinated closely with the pertinent land manager(s) and other stakeholders. All aspects of the project that are necessary for the implementation of the project, including all connected actions, need to be fully evaluated in the EIS. We suggest that the following topics be included in the analysis of alternatives:

- Definitions used;
- Desired goals and conditions;
- Process to ensure that ecosystem health is sustained; and rationale of why the selected process is expected to maintain ecosystem health (include "indicators" or "criteria" used to judge the health of the ecosystem and rationale of why they are considered to be representative of the health of the ecosystems);
- Identification of issues which cross political or other authority boundaries (i.e. cross-political, agency, administrative, ownership, etc.) and thus require coordination with other entities. Cultural boundaries (i.e. political, administrative, economic, societal, etc.) should not override scientific analysis of ecosystems;
- Identification of ecosystem characteristics and species which need to be separately tracked to ensure protection (e.g., listed species and their habitat);
- Identification and protection of the unique or small, but ecologically important sites that function as key elements of the ecosystem (i.e., springs, wetlands);

- A monitoring program, including the objectives (what, how much, how often, data and analysis needs, level of data and analysis required/analyzed, including how proposed monitoring compares to that under current area management plans); and
- Adaptive management (process to measure effects and detect problems, and then the use of monitoring results to make changes/corrections to protect, restore and sustain resources).

Water Quality

Water quality degradation is one of the EA's primary concerns. Section 303(d) of the Clean Water Act (CWA) requires the State of Alaska to identify waterbodies that do not meet water quality standards and to develop water quality restoration plans to meet established water quality criteria and associated beneficial uses. Such waterbodies may be present in the project area depending on the alignments and alternatives being analyzed.

The EIS should disclose which waters may be impacted, the nature of potential impacts, and specific pollutants likely to impact those waters. It should also report those waterbodies potentially affected by the project that are listed on the State's most current EPA-approved 303(d) lists, if applicable. The EIS should describe existing restoration and enhancement efforts for those waters, how the project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of water quality within impaired waters.

Specifically, we recommend that FERC require a baseline analysis of water quality, including collection of dissolved oxygen, temperature, metals and other parameters that are considered naturally occurring. The water quality monitoring data should be collected at enough frequency and duration to capture natural fluctuations due to seasonal changes in hydrology. These data will be used for comparison to changes in water quality as a result of the project implementation and associated future discharges.

Antidegradation

Antidegradation provisions of the CWA apply to those waterbodies where water quality standards are currently being met. This provision prohibits degrading the water quality unless an analysis shows that important economic and social development necessitates some degradation of water quality. The EIS evaluation should determine how the antidegradation provisions would be met. It is likely that waters within the proposed site are of high quality.

High quality waters are those whose quality exceeds that necessary to protect the Section 101 (a)(2) goals of the CWA, regardless of use designation. In "high-quality waters," under 131.12(a)(2), before any lowering of water quality occurs, there must be an antidegradation review. Long-term and temporary point and nonpoint source discharges will likely emanate from the construction site and camp, road, material sites and the powerhouse areas. These new discharges could lower water quality. The EIS should include the description of the performance standards and best management practices to be implemented to avoid and minimize these discharges and avoid any lowering of water quality. Additionally, where discharges are likely, a review of the sensitive habitats and aquatic species potentially exposed should be conducted.

Aquatic Resources, Wetlands and Riparian Areas

The EIS should describe aquatic habitats in the project area (e.g. habitat type, plant and animal species, functional values, and integrity) and the environmental consequences of the proposed alternatives on these resources. Impacts to aquatic resources should be evaluated in terms of the areal (acreage, for wetlands) or linear extent (for streams) to be impacted and by the functions they perform.

As previously stated, the project as currently proposed will require a CWA Section 404 permit from the Corps. The Corps may only issue a permit after the applicant has demonstrated that the action complies with the Section 404(b)(1) Guidelines (40 CFR 230). In addition to the Corps' substantive permitting regulations, the Guidelines establish the conditions under which the discharge of dredged or fill materials may be authorized by a Section 404 permit.

The Guidelines contain four fundamental restrictions on discharge, and no Section 404 permit may be issued unless compliance with the Guidelines has been demonstrated. A proposed discharge does not comply with the Guidelines if: 1) there is a practicable alternative to the proposed discharge that would result in less impact to the aquatic environment; 2) the proposed discharge results in a violation of a State water quality standard, toxic effluent standard, the Endangered Species Act or the Marine Protection, Research and Sanctuaries Act; 3) the proposed discharge will result in significant degradation of the aquatic ecosystem; or 4) the proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem.

In addition, a proposed discharge will be considered non-compliant with the Guidelines if there is not sufficient information to make a reasonable judgment as to whether the proposed discharge will comply. As mentioned above, the Guidelines preclude the Corps from authorizing an alternative that has not been demonstrated to be the LEDPA.

For activities that are non-water dependent, such as electricity generation, the Guidelines establish presumptions that upland alternatives are both available and less environmentally damaging. These presumptions must be rebutted before the placement of fill into wetlands or other special aquatic sites may be authorized.

The Guidelines (at 40 CFR 230.10(c)) also prohibit the discharge of dredged or fill materials which will cause or contribute to significant degradation of the waters of the United States. An alternative that causes significant degradation may not be authorized under Section 404, regardless of the level of compensatory mitigation. Determining whether a proposed discharge will cause or contribute to significant degradation requires an evaluation of the potential adverse effects to waters of the U.S., including wetlands. There are four categories of effects to the aquatic ecosystem that are evaluated. These include effects on: 1) human health or welfare, including on water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites; 2) aquatic life and other wildlife dependent on aquatic ecosystems; 3) aquatic ecosystem diversity, productivity, and stability, including the loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients or purify water; and lastly, on 4) recreational, aesthetic, and economic values.

The scale of the proposed project in terms of its physical size and degree of alteration of the natural flows of Sweetheart Creek indicate the possibility that it may cause significant degradation and not be permissible under Section 404. For this reason, the EPA strongly recommends that the EIS evaluate and disclose the impacts to the specific aquatic resources and functions listed in the Guidelines at 40 CFR 230.10(c). The Guidelines require that impacts to aquatic resources (direct, indirect and cumulative) be (1) avoided, (2) minimized, and (3) compensated for, in that sequence. Impacts must be avoided and minimized to the extent practicable, and only unavoidable impacts may be authorized. Unavoidable impacts must be compensated if compensation is determined to be appropriate and practicable. The EIS should discuss how the various alternatives comply with this requirement.

Compensation to offset unavoidable impacts to aquatic resources must be sufficient to replace the lost aquatic resource functions. The loss of aquatic resource function does not occur only within the

proposed fill footprint. A functional assessment of all aquatic resources that may be impacted (direct, indirect and cumulative) should be conducted and included in this analysis. The EIS should evaluate and quantify, to the degree possible, all project associated impacts to aquatic resources, including the loss of function, regardless of the location. To the extent that the losses of aquatic function can be quantified, they will have to be appropriately compensated. For example, if project construction and operations result in the loss of fish spawning habitat, this loss will need to be compensated. Mitigation should be implemented in advance of impacts to avoid habitat losses that would result from lag time between the occurrence of the impact and successful mitigation. The general compensatory mitigation requirements are described in 40 CFR 230.93.

Recreation, Subsistence Activities and Access

Potential impacts to existing and future recreation, subsistence activities, and access should be analyzed and reported in the EIS, particularly those impacts to any personal use or subsistence fishery, such as the one for sockeye at Sweetheart Creek. Also, impacts from off-road vehicle (ORVs) use can result in habitat destruction, increased sedimentation to water bodies, noise and air pollution. If ORV usage is likely due to the construction of new roads, this should be described in the EIS. The EIS should also describe what actions will be taken to mitigate and manage recreational, subsistence and access-related impacts in the project area.

Ecological Connectivity

Roads and bridges can create linear barriers in the landscape, thereby resulting in habitat fragmentation. The EIS should analyze and disclose the extent to which the various alternatives bisect and fragment wildlife habitat and movement routes, as appropriate. In addition to incorporating design elements into the dam to reduce impacts to connectivity, it will be important to consider connectivity and wildlife movements in road design and operation.

Ecological connectivity is broader than wildlife movement on the landscape. It includes such things as the connections and interactions among land, water, wood, soil, nutrients, species, and biological community functions. For example, ecological connectivity is impaired when a stream is channelized and separated from its floodplain; when culvert installation blocks fish passage; when wetland fills or impervious surfaces prevent ground water aquifer recharge; when hillslope cuts breach seepage areas, springs, or underground aquifers; or when aquatic habitat hydrological alterations and development interfere with surface water/ground water interactions and riverine hyporheic zones. Environmental impact assessments should focus on identifying these connections and the consequences of severing them; we recommend project design elements that incorporate the means to preserve them.

Land Use Impacts

The EIS should document all land uses within the project area, impacts of the project to the land cover and uses, and mitigation measures that would be implemented to reduce the impacts. The primary impact of construction on open land use types would be the removal of trees, shrubs, and other vegetation. Although these can be regenerated or replanted, their re-establishment can take decades or more, making the construction impacts to these resources long term and in some cases permanent. The impact on temperate rain forest land use, for example, in the permanent right-of-way areas would be a permanent change from forest to open land.

The EIS should describe the impacts to land use types, indicate if the impacts would be permanent or temporary, and state measures that would be taken to compensate landowners for loss of their resources because of the project. If the project would cross special areas then the EIS should specify the areas,

indicate impacts to the areas, and document any easement conditions for use of the areas, including mitigation measures.

Invasive Species
The EIS should contain measures that are consistent with Executive Order 13112 on Invasive Species. We suggest including any existing FERC direction for noxious weed management, a description of current conditions, and best management practices, which will be utilized to prevent, detect, and control invasives in the project area. The EIS should also discuss measures that would be implemented to reduce the likelihood of introduction and spread of invasive species within the proposed project area. We encourage the FERC to promote integrated weed management, with prioritization of management techniques that focus on non-chemical treatments first, and mitigation to avoid herbicide transport to surface or ground waters. Early recognition and control of new infestations is critical to stop the spread of the infestation and avoid wider future use of herbicides, which could correspondingly have more adverse impacts on biodiversity, water quality and fisheries.

Climate Change
Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities contribute to climate change. Effects of climate change may include changes in hydrology, sea level, weather patterns, precipitation rates, and chemical reaction rates. Therefore, the EIS should consider how resources affected by climate change could potentially influence the proposed project and vice versa. This evaluation is particularly important given the long life of hydroelectric projects. Finally, the EIS should quantify and disclose greenhouse gas emissions from the project and discuss mitigation measures to reduce emissions. We recommend that the revised draft guidance recently developed by CEQ regarding climate change evaluation be considered in FERC's analysis (http://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance.pdf).

Monitoring
The proposed project will impact a variety of resources for an extended period of time. As a result, we recommend that the project be designed to include an environmental inspection and mitigation monitoring program to ensure compliance with all mitigation measures and assess their effectiveness. The EIS should describe the monitoring program and how it will be used as an effective feedback mechanism so that any needed adjustments can be made to the project to meet environmental objectives throughout the life of the project.

Mitigation
A comprehensive discussion of proposed mitigation for direct, indirect and cumulative impacts is required by the CEQ NEPA regulations (40 CFR Part 1500). The CEQ regulations state that an EIS should include the means to mitigate adverse environmental effects and disclose the effectiveness of mitigation measures in minimizing adverse effects (40 CFR 1508.7). Simply listing the mitigation measures is insufficient to qualify as the reasoned discussion and "hard look" required by NEPA. Mitigation measures must be discussed in sufficient detail to ensure that potential detrimental environmental effects and measures to mitigate those effects have been fairly evaluated. Monitoring plans are also needed for measuring the effectiveness of the mitigation measures (quantitatively, if possible, and qualitatively), and determining the need for modifying mitigation.

The EIS should also address coordination efforts and funding or budget needs required to undertake or implement monitoring and mitigation measures, in compliance with the CEQ guidance on mitigation and monitoring (http://ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

Indirect and Cumulative Impacts

Project evaluation should identify and evaluate potential consequences of the proposed activities "outside" the proposal area boundaries. Because the project may result in indirect impacts, the draft EIS should evaluate impacts to other wildlife and aquatic resources in other areas, as applicable.

CEQ definition of *cumulative impact* is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions". The cumulative impacts analysis should, therefore, provide the context for understanding the magnitude of the impacts of the alternatives by analyzing the impacts of other past, present, and reasonably foreseeable projects or actions and then considering those cumulative impacts in their entirety. The EIS should include and analyze present and reasonably foreseeable projects and actions proximate to the project area, such as adjacent watersheds. Where adverse cumulative impacts may exist, the EIS should disclose the parties, which would be responsible for avoiding, minimizing, and mitigating those adverse impacts.

The EIS should clearly identify the resources that may be cumulatively impacted, the time over which impacts are going to occur, and the geographic area that will be impacted by the proposed activities. The focus should be on resources of concern; those resources that are at risk and/or are significantly impacted by the proposed activities before mitigation. In the introduction to the *Cumulative Impacts Section,* identify which resources are analyzed, which ones are not, and why. For each resource analyzed, the EIS should:

- Identify the current condition of the resource as a measure of past impacts. For example, the percentage of habitat lost to date by species.
- Identify the trend in the condition of the resource as a measure of present impacts. For example, the health of the resource is improving, declining, or in stasis.
- Identify the future condition of the resource based on an analysis of the cumulative impacts of reasonably foreseeable proposals or actions added to existing conditions and current trends. For example, what will be the future condition of the watershed?
- Assess the cumulative impacts contribution of the proposed alternatives to the long-term health of the resource, and provide a specific measure for the projected impact from the proposed alternatives.
- Disclose the parties, which would be responsible for avoiding, minimizing, and mitigating those adverse impacts.
- Identify opportunities to avoid and minimize impacts, including working with other entities.

We have issued guidance on how we are to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, which can be found on the EPA's Office of Federal Activities home page at: http://www.epa.gov/compliance/resources/nepa.html. The guidance states that in order to assess the adequacy of the cumulative impacts assessment, five key areas should be considered. EPA tries to assess whether the cumulative effects analysis:

- Identifies resources if any, that are being cumulatively impacted;
- Determines the appropriate geographic (within natural ecological boundaries) area and the time period over which the effects have occurred and will occur;

- Looks at all past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern;
- Describes a benchmark or baseline; and
- Includes scientifically defensible threshold levels.

Finally, below are additional resources that may be helpful in the FERC's evaluation of cumulative impacts for this EIS.

Canter, L. W., and Kamath, J. (1995). Questionnaire checklist for cumulative impacts. *Environmental Impact Assessment Review*, 15(4): 311-339. Online: http://www.sciencedirect.com/science/journal/01959255

Council on Environmental Quality (CEQ). (1997). Considering cumulative effects under NEPA. Online: http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm.

Traditional Knowledge
EPA acknowledges the need to provide meaningful public involvement in the preparation of an EIS and recommends the identification and integration of traditional knowledge (TK) into the EIS analysis, as appropriate. At a minimum, we recommend that FERC consider any TK regarding the climate, ecological processes, and resource presence and use in the project area in the EIS.

Consultation with Federally-Recognized Tribal Governments
Presidential Executive Order (EO) 13175 Consultation and Coordination with Indian Tribal Governments recognizes the unique legal relationship the United States has with tribal governments. The EO requires all federal agencies to establish regular and meaningful consultation and collaboration with tribal officials and to strengthen government-to-government relationships with tribal governments. We recommend that FERC engage any potentially affected tribal governments in meaningful consultation and fully disclose the process and decisions resulting from that process within the EIS.

Also, consistent with the July 28, 1999, Memorandum from the CEQ to Heads of Federal Departments and Agencies, FERC should consider inviting potentially affected tribal governments to participate in the EIS development process as cooperating agencies. This would provide for the establishment of a mechanism for addressing intergovernmental issues throughout the EIS development process.

If tribal governments choose to engage in consultation, we recommend FERC develop a government-to-government consultation plan which would outline the process for working effectively with tribal governments during the EIS development process. This plan would be useful in determining the best timing for conducting the consultation meetings which would avoid conflict with subsistence seasons, which vary depending on the community. This plan should be developed in collaboration with affected tribal governments.

Environmental Justice and Public Participation
The draft EIS should clearly disclose what efforts were taken to ensure effective public participation in the scoping process and throughout the development of the EIS. In addition, since low income, minority and/or tribal communities could be impacted by the proposed activities, the draft EIS should disclose what efforts were taken to meet environmental justice requirements consistent with EO 12898 (*Federal Actions to Address Environmental Justice in Minority and Low-Income Populations).* We recommend this should include the following:

- A description of the methodology and criteria utilized for identifying low income, minority and tribal communities, if appropriate; the sources of data utilized for these analyses; and the references utilized for establishing the criteria.

- A comprehensive accounting of all impacts on low income, minority and tribal communities, including (but not limited to) cumulative and indirect impacts, exposure pathways unique to the impacted communities, historic exposures, and impacts to cultural, historic and protected resources. In addition, the draft EIS needs to determine if the impacts to these communities will be disproportionately higher than those on non-low income, minority and tribal communities. For such a determination, the EIS must identify a reference community, provide a justification for utilizing this reference community, and include a discussion of the methodology for selecting the reference community.

- The EIS should demonstrate that communities, if any, bearing disproportionately high and adverse effects have had the opportunity for meaningful input into the decisions being made about the proposal. The draft EIS should describe what was done to inform the communities about the proposal and the potential impacts it will have on their communities (notices, mailings, fact sheets, briefings, presentations, exhibits, tours, news releases, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on-scene information), what input was received from the communities, and how this input was utilized in the decisions which were made regarding the proposal.

Care should also be given to schedule meetings and decision points in the EIS process to avoid conflicts with subsistence and other traditional activities, whenever possible. We also recommend that particular attention be given to consideration of the dependence of tribal and minority communities on local and regional subsistence resources, access to those resources, and perception of the quality of those resources. Various environmental justice assessment tools are available at: http://www.epa.gov/compliance/resources/policies/ej/index.html#tools.

ENCLOSURE 2

EPA'S SECTION 309 REVIEW: THE CLEAN AIR ACT AND NEPA